

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #08	CCRB Case #: 202101926	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/20/2021 11:00 PM	Location of Incident: across the street from 806 62nd Street	18 Mo. SOL 9/20/2022	Precinct: 68		
Date/Time CV Reported Thu, 03/25/2021 11:36 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 03/25/2021 11:36 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Raheem Barnes	24076	966954	068 PCT
2. SGT John Freisen	03474	950444	068 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Raheem Barnes	Abuse: Police Officer Raheem Barnes stopped the vehicle in which § 87(2)(b) was an occupant.	
B.SGT John Freisen	Abuse: Sergeant John Freisen stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Raheem Barnes	Abuse: Police Officer Raheem Barnes questioned § 87(2)(b)	
D.POM Raheem Barnes	Abuse: Police Officer Raheem Barnes searched § 87(2)(b)	
E.POM Raheem Barnes	Abuse: Police Officer Raheem Barnes searched the vehicle in which § 87(2)(b) was an occupant.	
F.POM Raheem Barnes	Abuse: Police Officer Raheem Barnes failed to provide § 87(2)(b) with a business card.	
G.SGT John Freisen	Abuse: Sergeant John Freisen failed to provide § 87(2)(b) with a business card.	
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 25, 2021, § 87(2)(b) filed this complaint with the CCRB via phone.

On March 20, 2021, at approximately 11:00 p.m., § 87(2)(b) was parked in his car across the street from 806 62nd Street in Brooklyn, when he was stopped by Sgt. John Freisen and PO Raheem Barnes of the 68th Precinct (**Allegations A and B: Abuse of Authority;** § 87(2)(g)). Upon approaching the vehicle, PO Barnes asked § 87(2)(b) if he had anything illegal in his vehicle, which he denied (**Allegation C: Abuse of Authority;** § 87(2)(g)). § 87(2)(b) was then directed to step out of the vehicle and PO Barnes subsequently searched him and his vehicle; nothing was recovered on either § 87(2)(b) person or from his vehicle (**Allegations D and E: Abuse of Authority;** § 87(2)(g)). After the vehicle search, § 87(2)(b) was instructed that he was free to leave, and Sgt. Freisen and PO Barnes left the scene. Neither officer provided § 87(2)(b) with their business cards (**Allegations F and G: Abuse of Authority;** § 87(2)(g), § 87(4-b)).

Body-worn camera (BWC) footage was received from Sgt. Freisen and PO Barnes [BR01 and BR02, respectively].

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Raheem Barnes stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: Sergeant John Freisen stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation (C) Abuse of Authority: Police Officer Raheem Barnes questioned § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Raheem Barnes searched § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Raheem Barnes searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) testified that he was sitting inside his car, after finishing his meal at the restaurant across the street, playing on his phone as well as texting a friend. The lights in his car were off, but the vehicle was running. After about 30 minutes in his car, PO Barnes and Sgt. Freisen approached § 87(2)(b). He had not seen the officers prior to them approaching. PO Barnes asked § 87(2)(b) to roll down all four windows, which he did; as he did so, he noticed Sgt. Freisen standing on the passenger side. PO Barnes informed him that this was their second time passing him, as they had passed him a few minutes prior and observed that he had not moved. PO Barnes asked § 87(2)(b) what he was doing; § 87(2)(b) explained that he had just finished eating across the street and was playing with his phone in his car and had lost track of time. PO Barnes then asked for § 87(2)(b) license. § 87(2)(b) asked why, to which PO Barnes repeated his request. § 87(2)(b) provided his license, as well as his PBA card, which PO Barnes returned without looking at. PO Barnes did not run § 87(2)(b) license or walk away with his license at any point. As PO Barnes was looking at his license, § 87(2)(b) asked why the officers stopped him, to which PO Barnes responded, "I'll tell you later". § 87(2)(b) continued, asking if someone had reported him or if he matched a description and if he had done anything wrong, which PO Barnes told him no and asked "Why, do you have a problem with someone here?", which § 87(2)(b) denied. PO Barnes asked § 87(2)(b) if he had been drinking or if he had taken any drugs, which § 87(2)(b) denied. He stated that neither officer commented on smelling anything in the vehicle. After approximately two minutes, PO Barnes gave § 87(2)(b) his license back and told him to step out of the vehicle, which § 87(2)(b) did. As he was doing so, Sgt. Freisen moved from the passenger side and stood behind PO Barnes. PO Barnes then directed § 87(2)(b) to place his hands on top of the open car door and asked him several times if he had any sharp objects in his pocket, which § 87(2)(b) repeatedly denied. PO Barnes then frisked § 87(2)(b) torso and legs, running his hands down one leg, patting the ankle area, and then moving up the other leg, and patting his belt area. He also went into § 87(2)(b) jacket and Canada Goose vest pocket's, asking him why he had so many pockets and referring to § 87(2)(b) inside vest pocket as

a “hidden pocket”. PO Barnes then instructed § 87(2)(b) to stand at the back of the vehicle, which he did. He began to search the vehicle; § 87(2)(b) who had begun to walk to the back of the vehicle, turned towards PO Barnes to see what he was doing and told him that he did not consent to the search. Sgt. Freisen interceded, telling him not to move and not to “look at [PO Barnes]...look at me”. PO Barnes searched the front of the vehicle, under the seats, in the glove compartment, and in the center console. He also searched the backseat of the vehicle, where § 87(2)(b) had a backpack that contained three separate bags, one containing work receipts and paperwork, one containing personal items, and once containing jewelry pieces he was working on (§ 87(2)(b) is employed at a jewelry store). PO Barnes took all of the bags out of his backpack, his receipts and his money, and some jewelry pieces he was working on. After searching the backseat, PO Barnes popped the trunk and proceeded to search the area. Nothing was recovered from the trunk [BR03].

PO Barnes testified that he and Sgt. Friesen were patrolling in the vicinity of 802 62nd Street, which he stated is a drug prone location, as there is a gambling house in the area that also sells ketamine. He had not made any drug arrests in the area but knew of other officers in the command who had. While on patrol, PO Barnes, who was driving, observed a vehicle, parked in a legal parking spot, that was running. The headlights of the car were on, but PO Barnes could not recall if there were any lights on inside the vehicle. Nothing else drew his attention to the vehicle. PO Barnes drove up next to the vehicle and looked in, where he saw § 87(2)(b) with his head down, but was unable to see what § 87(2)(b) was doing. He continued driving and circled back three minutes later, where he observed that § 87(2)(b) had not moved. Nothing different drew his attention to § 87(2)(b) the second time he approached. PO Barnes stated that, because the location was a drug-prone area and his car had been running for over three minutes, he wanted to ensure that § 87(2)(b) was okay and determined to affect a stop. Upon approaching the vehicle, he did not suspect § 87(2)(b) of any crime. As PO Barnes got within a few feet from the vehicle, he smelled the odor of lit marijuana, which he determined to be coming from the vehicle. He did not recall if the windows were rolled down at his point or if Sgt. Freisen made any comments regarding the odor of marijuana. PO Barnes did not recall exactly what he first said to § 87(2)(b) but that he asked him how he was and for his information, which § 87(2)(b) complied with. PO Barnes continued to smell the odor of marijuana emanating from the vehicle and observed a little white residue by § 87(2)(b) right nostril but was unsure of what this substance could be. He did not inform § 87(2)(b) that he smelled the odor of marijuana but stated that there was no reason for this. He did not see any marijuana in the vehicle during this. § 87(2)(b) did not ask PO Barnes or Sgt. Freisen why he was being stopped. He and § 87(2)(b) spoke for a few minutes before he directed him to step out of the vehicle, which he stated was due to the odor of marijuana. § 87(2)(b) was compliant with stepping out of the vehicle and remained calm while doing so. He directed § 87(2)(b) to stand next to the open driver door and subsequently searched § 87(2)(b) patting his waistband and entering in his jacket and pants pockets.; he did not recover anything on his person. PO Barnes stated that he searched § 87(2)(b) for officer safety, as the location made him concerned and that he has a safety concern for all vehicle stops he conducts; he stated that that there was no other reason for the search. Once § 87(2)(b) was searched, he went to stand by the trunk with Sgt. Freisen as PO Barnes searched the vehicle, which he did so in connection with the odor of marijuana. He searched the front portion, the back of the vehicle and the trunk of the car. PO Barnes was not sure how long he was searching the vehicle. No marijuana or any other contraband was recovered in the vehicle [BR04].

Sgt. Freisen’s testimony was largely consistent with PO Barnes’. As they were driving in the vicinity (PO Barnes was the operator), Sgt. Freisen observed a car that was parked and running. PO Barnes parked their car and they remained stationary while observing the vehicle. He did not recall having a conversation about this with PO Barnes. He did not recall exactly how far they were parked from § 87(2)(b) or in what location, but that it was less than 20 feet away. After observing § 87(2)(b) for three minutes, in which he did not move or do anything else with his vehicle, Sgt. Freisen and PO Barnes approached the vehicle. Sgt. Freisen stated that their intention for

approaching § 87(2)(b) was to stop him for engine idling. He stated that § 87(2)(b) with his car on and parked for over three minutes, constituted idling in his definition and in his understanding of the Patrol Guide. He did not believe § 87(2)(b) to have committed any other crimes or violations and did not suspect § 87(2)(b) idling to be in connection with any drug-related activity. Sgt. Freisen went to the passenger side of the vehicle while PO Barnes went to the driver side, where he directed § 87(2)(b) to roll down the windows. As he rolled down the window, Sgt. Friesen smelled the strong odor of burnt marijuana, which he determined to be emanating from the vehicle, but did not know from where specifically. He was unable to see marijuana or other contraband in the vehicle. PO Barnes began a conversation with § 87(2)(b) but Sgt. Freisen was unable to hear it. He did not have any conversation with § 87(2)(b). He did not recall if he or PO Barnes ever communicated that they smelled the odor of marijuana to § 87(2)(b) during the stop. After an unknown amount of time, PO Barnes directed § 87(2)(b) to step out of the vehicle, which he was compliant with. PO Barnes then searched § 87(2)(b). PO Barnes then searched the entirety of § 87(2)(b) vehicle, including the trunk. Sgt. Freisen did not instruct PO Barnes to conduct the search of § 87(2)(b) or the vehicle. He did not recall what conversation he had with § 87(2)(b) during the search. He stated he was still able to smell the odor of marijuana from the vehicle at this point. PO Barnes did not recover anything from the search [BR05].

PO Barnes BWC footage was consistent with § 87(2)(b) testimony. At 1:00 minutes, PO Barnes approaches § 87(2)(b). At 3:10 minutes, § 87(2)(b) asks PO Barnes why he was being stopped and PO Barnes informs him that he had been in his car for more than three minutes. § 87(2)(b) told the officers that he had “gotten carried away with social media”. At 3:33 minutes, PO Barnes asks § 87(2)(b) “§ 87(2)(b) is there anything illegal in your car I should know about?”, which § 87(2)(b) denies. At 3:35 minutes, PO Barnes asks § 87(2)(b) to step out of the vehicle, which he complies with. PO Barnes directs § 87(2)(b) to place his hands on top of the vehicle and says, “I’m gonna search you alright?”. At 4:00 minutes, he asked § 87(2)(b) “Nothing’s going to poke me, right?”, which § 87(2)(b) denies. From 4:02 minutes to 7:00 minutes, PO Barnes searches § 87(2)(b) pants pockets, jacket pockets, and vest pockets, including an inside vest pocket, pulling out his phone, keys, cash, and various papers and receipts. He also frisks § 87(2)(b) belly area and the inside lining of his vest. From 7:00 to 7:40 minutes, PO Barnes searches § 87(2)(b) back pants pockets and frisks his legs. He then directs § 87(2)(b) to the back of the vehicle. Between 7:40 minutes and 23:40 minutes, PO Barnes searches the entirety of § 87(2)(b) car, including the front and back driver and passenger seat and the trunk [BR02]. Neither PO Barnes or Sgt. Freisen’s BWC shows the officers commenting on smelling the odor of marijuana or informing § 87(2)(b) of such [BR01 and BR02].

No stop report was prepared for this incident [BR06].

As per Administrative Code 24-163, no person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes [BR07].

People v. Garcia (2012) 20 N.Y.3d 317, rules that, during a “request for information,” a police officer may approach an individual when there is some objective credible reason for that interference not necessarily indicative of criminality. The request may involve basic nonthreatening questions regarding, for instance, identity, address, or destination. However, once the officer asks more pointed questions that would lead the person approached reasonably to believe that he or she is suspected of some wrongdoing, the officer is no longer merely seeking information. This common-law right of inquiry, a wholly separate level of contact, is activated by a founded suspicion that criminal activity is afoot [BR08].

People v. Chestnut (1974), 43 A.D.2d 260, rules that the odor of marijuana, with nothing more, is sufficient to provide police officers with probable cause to search the automobile and its occupants [BR09].

§ 87(2)(g)

§ 87(2)(g)

While both officers maintained that there was an odor of marijuana present, BWC footage showed that neither officer commented on this during the incident, either to § 87(2)(b) or to each other. Additionally, no documentation was prepared detailing this and a thorough search of both § 87(2)(b) and his vehicle yielded negative results for any marijuana. § 87(2)(g)

§ 87(2)(b) was not suspected of any other criminal activity. § 87(2)(g)

PO Barnes testified that the reason § 87(2)(b) and his vehicle were searched was incidental to the odor of marijuana; as detailed above, the investigation did not credit that such an odor was present during the incident. § 87(2)(g) PO Barnes had no other stated reason for searching § 87(2)(b) and his vehicle. § 87(2)(g)

Allegation (F) Abuse of Authority: Police Officer Raheem Barnes failed to provide § 87(2)(b) with a business card.

Allegation (G) Abuse of Authority: Sergeant John Freisen failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) testified that after 15 to 20 minutes, PO Barnes concluded his search of the vehicle. He then told § 87(2)(b) "Come over here", gesturing him forward. § 87(2)(b) asked PO Barnes what he was looking for, which he did not respond to. PO Barnes then directed § 87(2)(b) to sit inside the vehicle, which he did. Once § 87(2)(b) was inside the vehicle, PO Barnes told him, "This is not a safe area", but did not provide any other reason for the search. § 87(2)(b) asked PO Barnes if he was going to apologize for conducting the search, to which PO Barnes responded, "Have a nice day." PO Barnes and Sgt. Freisen then drove off and left the scene. Neither officer offered § 87(2)(b) their business card; he did not request one. Neither officer verbalized their names or shield numbers during the incident. Aside from informing him that the area was not safe, neither officer provided § 87(2)(b) with any reason as to why he was stopped [BR03].

PO Barnes testified that after searching the vehicle, he directed § 87(2)(b) to get back into the vehicle and informed him that he was free to go. He did not remember if § 87(2)(b) asked any final questions regarding the stop after he got back in his car. PO Barnes, believing the interaction to be over, deactivated his BWC, before realizing he had not offered § 87(2)(b) a business card. He asked § 87(2)(b) if he wanted a business card, but he refused, telling the officers that he has friends on the job and that he did not want it. Sgt. Freisen also offered his business card but was also refused. PO Barnes did not recall if at any point he identified himself by his name and shield to § 87(2)(b) or if Sgt. Freisen did so. After § 87(2)(b) refused their business cards, the officers left the scene [BR04].

Sgt. Freisen testified that, after the search was concluded, § 87(2)(b) was released and issued a warning for idling. He did not recall if § 87(2)(b) requested his or PO Barnes information or if they provided this to him. He did not recall if he or PO Barnes offered § 87(2)(b) their business cards. He stated that if § 87(2)(b) asked for business cards, he would have had to provide a business card and believed he had business cards on him during the incident. After issuing the warning, the officers resumed their patrol [BR05].

Both PO Barnes and Sgt. Friesen deactivated their BWC after the conclusion of the search [BR01 and BR02]. The last interaction captured between § 87(2)(b) and the officers is PO Barnes directing § 87(2)(b) back to his car at 23:40 minutes. PO Barnes BWC does not show him offering § 87(2)(b) his business card [BR02]. Sgt. Freisen deactivates his BWC as he is walking back towards the police vehicle; his footage does not depict him offering § 87(2)(b) his business card [BR01].

As per NYC Administrative Code § 14-174, during a law enforcement activity, such as searches of persons or property, including vehicles, an officer shall identify himself or herself by providing their name, rank, and command, provide to the law enforcement subject an explanation of the reason for such law enforcement activity (unless providing such information would impair a criminal investigation), and offer a business card at the conclusion of the activity when it does not result in a summons or arrest [BR10]

Despite PO Barnes maintaining that he and Sgt. Friesen both offered their business cards at the conclusion of the incident, the investigation credits § 87(2)(b) testimony that no business cards or other identifying information was offered, given the consistency of his statement with the BWC footage. Additionally, Sgt. Freisen did not corroborate PO Barnes' assertion that § 87(2)(b) refused their business cards, and it appears from his BWC that he is walking away from § 87(2)(b) at the conclusion of the incident, further casting doubt that he offered his business card. Additionally, the BWC shows that neither officer identified themselves during the incident, which they were also required to do. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR12].
- PO Barnes has been a member of service for two years and has been a subject in one other CCRB complaints and one allegation, which was not substantiated. § 87(2)(g)
- § 87(2)(g)
- Sgt. Freisen has been a member of service for ten years and has been a subject in two other CCRB complaints and two allegations, neither of which were substantiated. § 87(2)(g)
- § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- On September 28, 2021, a FOIL request was filed with the New York City Office of the Comptroller to determine if a Notice of Claim was filed for this incident, the results of which will be added to the case file upon its receipt [BR13].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad: _____8_____

Investigator: Genevieve Lamont Inv. Genevieve Lamont 10/04/2021
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 10/4/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date